

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPLICATION NO.1512 OF 2004

Unity Pharma Pvt.Ltd. .. Petitioner

Versus

Sayyed Kalimuddin & Anr. .. Respondents

Mr.Girish Kulkarni and Katil Khan for petitioner]

Mr.A.P.Mundargi, Senior Advocate with Pramod

Patil and Ratnakar Singh for respondent No.1

Ms.M.M.Deshmukh, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th September 2006.

P.C.

. Rule. Respondents waive service of Rule.

Returnable forthwith by consent.

2. Petitioner is the original accused No.1 in Case No.577/S/2001 which is pending before the Additional Chief Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai.

3. First respondent - original complainant had filed the said complaint alleging commission of offences punishable under section 138 and 141 of the Negotiable Instruments Act and Sections 197, 420, 467, 468, 171, 500 and 114 of I.P.C.

4. It appears from the record that the Magistrate proceeded to issue process and the accused were summoned. They filed an application seeking their discharge from the case.

5. The application preferred on 19th July 2003 was heard after reply thereto was filed by the first respondent complainant.

6. At Exh.D is the order passed by the learned Magistrate on 25th February 2004. He concluded that the charge under sections 197, 465, 468, 471, 500 of I.P.C. needs to be recalled and the accused are discharged of the offences under these provisions. However, he held that there is sufficient material to proceed against the accused under section 420 of I.P.C. and Sections 138 and 141 of Negotiable Instruments Act.

7. Petitioner accused No.1 was aggrieved by this order of the learned Magistrate and he preferred Criminal Revision Application No.450 of 2004 before the learned Additional Sessions Judge.

8. Learned Sessions Judge after perusing the records and hearing parties has confirmed the order insofar as discharging the accused of commission of other offences, obviously because

that part of the order was not challenged by the original complainant. However, she proceeded to dismiss the Revision application on the ground that the order passed on 25th February 2004 does not require interference in revisional jurisdiction.

9. Aggrieved by the order of the learned Metropolitan Magistrate and the Sessions Judge, the petitioner has invoked this Court's jurisdiction under Article 227 of the Constitution of India read with section 482 of Cr.P.C.

10. The only submission raised by Mr.Kulkarni appearing for petitioner is that the complaint does not disclose any offence punishable under section 138 or 141 of the Negotiable Instruments Act. Even if the complaint is read as a whole and without referring to verification statement, it is obvious that it proceeds on the basis that

the cheque was dishonoured not on account of insufficiency of funds but because it lacked the second signature. He submits that such an act on the part of petitioner accused would not attract the penal provisions under section 138 and 141 of the Negotiable Instruments Act. He submits that on plain reading of section 138 of the Negotiable Instruments Act, the offence is return of the cheque by the Banker unpaid either because of the amount of money standing to the credit of that account being insufficient to honour the cheque or that the cheque exceeds the amount arranged to be paid from that account by an agreement with the Bank. The element of signature not appearing or tallying is certainly therefore, not within the purview of this provision, is the submission and reliance is placed upon a decision of the Supreme Court in the case of Vinod Tanna Vs. Zaheer Siddique, reported in 2002 ALL M.R. (Cri) 975 (SC).

11. On the other hand, learned Senior Counsel appearing for respondent No.1 original complainant submits that while it is true that the complainant has not challenged the order of discharge, at least insofar as section 420 of the I.P.C. is concerned, it is conceded that the complaint, prima facie, discloses commission of offence. Insofar as, the offence under Negotiable Instruments Act is concerned, it is submitted that the complaint must be read as a whole and if so read, it is clear that an offence even under the said provision is committed by the accused.

12. With the assistance of learned Counsel, I have perused the petition and the annexures thereto. The complaint which is filed in the Court of Metropolitan Magistrate, proceeds to state that these cheques which have been dishonoured are so dishonoured because the second signature was not affixed thereon. This aspect

is clear from paras 18 and 29 of the complaint.

13. If these are the averments in the complaint itself, then, prima facie, it is clear that dishonour is on account of reasons other than those specified in section 138 of N.I. Act. Obviously, therefore, Neither process could have been issued Nor a charge could have been framed insofar as these allegations in the complaint. The petitioner is, therefore, rightly entitled to have a discharge insofar as these offences. To my mind, there does not appear to be any serious controversy and it is more or less admitted that the complaint reads as above and, therefore, no offence under the N.I. Act is disclosed.

14. Mr.Kulkarni does not seriously dispute that the complaint discloses prima facie commission of offence under section 420 of I.P.C. Therefore, there is no reason to disturb the finding of the Court below in that behalf.

15. For the reasons set out above, petition is allowed in part. Petitioners are entitled to be discharged even in case of the offences alleged and punishable under the N.I.Act. However, the courts below were right in concluding that the complaint, prima facie discloses offences punishable under section 420 of I.P.C. and that charge should be framed on the basis of materials produced in that behalf.

16. Rule is made absolute to the above extent. Orders of the courts below would stand quashed and set aside to above extent only. However, it is clarified that the merits of the controversy are not being gone into and any opinion either by the courts below or by me is prima facie and shall not influence the court below while trying the case.

17. Considering the fact that the complaint

is pending for the last five years and even the present petition is pending for more than two years, the hearing of complaint is expedited. Ad-interim order stands vacated.

(S.C.Dharmadhikari, J)